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Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association ("ACA") *Ex Parte* Filing on the Connect America Cost Model, WC Docket No. 10-90

Dear Ms. Dortch:

On March 28, 2013, Ross Lieberman (ACA), and the undersigned, Thomas Cohen (Kelley Drye & Warren LLP), met with Michael Steffen, Legal Advisor to Chairman Genachowski, and Carol Mattey and Steve Rosenberg from the Wireline Competition Bureau. The purpose of the meeting was to review issues raised and proposals submitted by ACA in the Commission's Connect America Fund Phase I Incremental Support Further Notice of Proposed Rulemaking in the above-referenced docket.

Mr. Lieberman began the meeting by reviewing ACA's proposal for awarding CAF Phase I incremental support in 2013 should the Commission decide to continue this program for another year. He stated that the Commission could continue to achieve its objectives for the program by not altering its rules for price cap LECs that have more than a sufficient number of eligible lower cost locations based on the 2013 allocation that are not served with broadband service at speeds of 768/200 kbps. These price cap LECs have a sound commercial rationale to use their entire allocation of incremental support of $775 per location. At the same time, he stated that the Commission may consider altering its rules for those price cap LECs that have an insufficient number of eligible lower cost locations based on the 2013 allocation not served with broadband service at speeds of 768/200 kbps. In these instances, price cap LECs should be able to use Phase I incremental support to deploy broadband to locations in areas that do not currently receive 4/1 Mbps broadband service but only after the LEC uses its support to deploy broadband to its remaining lower cost unserved locations with at most 768/200 kbps service. By requiring lower cost unserved locations with 768/200 kbps to be served first, ACA's approach helps ensure the Commission's objective for the program is achieved. It also would avoid providing these LECs with surplus funds, which they could use for "non-supported" purposes, thereby harming competitive, high performance infrastructure deployments. As for distribution of "leftover" 2012 Phase I incremental support, Mr. Lieberman stated that the Commission should either add the amount to the Phase II distribution where it can be distributed more efficiently or return the money to consumers by lowering the contribution rate paid by them.

Mr. Lieberman then discussed the Commission's proposals to alter the amount of support per location or provide support for second-mile fiber. In both instances, ACA contends that the record for the proceeding is devoid of any evidence supporting either proposal. In particular, while the Commission has developed an average cost for the deployment of second mile fiber, basing the amount of support on such an average will not ensure that support is awarded efficiently, that is, it will not ensure that support will not be used in areas where unsupported competitors provide service. Mr. Lieberman and Mr. Cohen then elaborated on the reasons why use of just average cost of second-mile fiber as a basis for support is so flawed:

> The cost of fiber deployments varies significantly based on numerous construction factors, e.g. is it an aerial or buried build. Price cap LECs will naturally use support in areas where the costs are below the average and use the excess to compete in areas served by cable operators or for other "non-CAF" purposes.
>
> Because of the architecture of the price cap LEC networks, second-mile fiber running from central offices to remote nodes is likely to pass "served" areas as well as unserved areas – and thus will be used to serve locations already served by competitive providers.
>
> While the Commission has inquired about the number of unserved locations that should be served by second-mile fiber, there is no evidence in the record as to the appropriate number. Therefore, the Commission has no basis upon which to ensure that any expenditure for second-mile fiber will be actually used to serve unserved locations.
>
> Even if average cost was a sufficient basis upon which to base support, that does not mean that the Commission should provide "dollar-for-dollar" support and not require the price cap LECs to invest their own capital in the form of matching funds. In other words, in expending the limited amount of Incremental Support the Commission should seek to leverage this funding to use it most efficiently. Yet, there is no evidence in the record as to the proper "match" which would achieve this purpose.

In sum, the Commission has no basis – other than from the data submitted by ACA – to amend its rules for the distribution of Phase I incremental support.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

Thomas Cohen

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cc: Michael Steffen
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